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Blythe Leszkay

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Foreword

Blythe Leszkay

A lot has changed in the thirteen years since this article was first published. Starting this year, women are allowed into every combat position in the military. It happened gradually, with thousands of women proving themselves worthy along the way.

On the personal front, I was honorably discharged from the Army Reserves after eleven years of service. I got out under the "Don't Ask Don't Tell" policy, which is also now thankfully a thing of the past. I am a Deputy Attorney General in the California Attorney General's Office, where I primarily handle criminal appeals and writs. My writing has gotten considerably more succinct.

Feminism on the Front Lines**

*Blythe Leszkay**

The billions of visible stars are the only way to distinguish where the sky ends and where the treeline begins. It is very dark and very cold. Every night this week has been cold. One long week of shivering, sleepless nights. But now I have my foxhole. My own self-dug grave. It's quite an improvement actually. The past six nights have been spent either marching through the woods, conducting a midnight raid, or lying in a large circle forming a perimeter out in the open. I feel relatively safe now in my foxhole as I scan the dark horizon, watching for any movement, any sign that the enemy is near. But the woods are silent. "Charlie" is nowhere to be seen.

An hour has passed and it's my buddy's turn to keep watch while I attempt to get some sleep. I've slept a total of about three hours in the past thirty-six. Eighteen of those hours were spent digging the foxhole that now shields me from my impending death. I had struggled with a little fold-out shovel that was no longer than my arm to dig up the hard, red clay. My back is paying the price. My body is exhausted. I whisper to Himes, my foxhole buddy, and reach over to wake him. Himes is actually a replacement because my original buddy was captured by the enemy earlier today while on a recon mission. Himes grudgingly acknowledges his turn to keep watch, and when I'm sure he's awake, I sink down into the foxhole in a modified squat and close my eyes. Even when I'm allowed the time to sleep, the cold keeps me awake. My small wool blanket offers little comfort as I shiver.

"Leszkay!" I hear Himes whispering excitedly to me. It can't be my turn to watch yet; I just closed my eyes. He ducks under the low roof that divides us and comes over to my side of the foxhole. "Look out there. Do

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* Law clerk for the Honorable Ronald S.W. Lew, U.S. District Court, Central District of California. B.A., University of Southern California, 1996. J.D., Cum Laude, Order of the Coif, Loyola Law School 2001. First Lieutenant, U.S. Army Reserves. Thank you to Professor Yxta Murray for her encouragement to write and submit this article. I am especially grateful to Raquel Hunter and to my family for their unyielding support. I would like to dedicate this article to the memory of my mother, the strongest woman I have ever known.

you see that?" He seems a little freaked out, so I jump up and look in the direction he's pointing. I can't see anything. I squint harder. "What do you see?" I ask. "There's people walking out there. Look!" People? Walking? Even if there were people out there, I can't imagine they would be walking. I don't think the enemy generally just walks up to you. But I look again, straining to see what he sees. I want desperately to see them. I want to be able to spot the enemy. "I don't see anything," I admit reluctantly. He says, "I'm going to tell Jeter." Jeter is our platoon leader, and he has night-vision goggles. I wait and continue searching for these walking people. Maybe I just don't know how to spot the enemy walking around in the dark. After all, Himes has been in the Army for over ten years, and he has infantry experience. Where are they?

A few minutes later Himes returns. He climbs back into his position. "There's nothing there. I guess I was just hallucinating. God, I'm fucking tired." Oh, great.

Hours later the sky begins to turn from pitch black to a beautiful dark blue. The billions of stars are slowly disappearing, one by one. It blows me away to see how many stars the sky can hold. The night sounds of howling wild dogs and hooting owls slowly give way to the happy chirping of morning. The irony of admiring nature while awaiting what has been billed as "the mother of all battles" has not escaped me. The crack of distant gunfire shatters my peaceful pre-dawn moment. It's behind and to my right. I look in that direction, but I can't see through the brush. There are sounds of people yelling, explosions, rapid gunfire. A signal is yelled through the platoon that means the enemy has hit us from the rear. I turn around in my foxhole and wait for the attack to move this way. I am more awake now than I have ever been. My heart is pounding, but I breathe slowly and deliberately. Wait. I incessantly scan the woods. I hear them; the sounds are getting louder, nearer. But I can't see anyone yet. I hold my fire, waiting, ready.

They appear. Silhouettes running from tree to tree. They are about twenty yards away. I take aim and fire as they move between the trees. I'm a little confused when they don't fall as I shoot. Instead, they look down at their bodies. Then I remember, we're firing lasers and blanks. They respond to the beeping of their MILES (Multiple Integrated Laser Engagement System) gear that tells them they've been shot. They take off their kevlar helmets and sit on the ground, indicating that they're dead.

The machine gun that is positioned to my right is firing rhythmically. Nobody has noticed my position yet. I shoot two enemy soldiers in the back as they move toward the machine gunner's foxhole. They spin around as their MILES gear responds to my shots; they are surprised to see me behind them. Loud explosions and flares are going off within feet of us. I duck into my foxhole at the whistling sound of an incoming missile. After the explosion, I immediately pop back up and resume firing. I am suddenly

distracted by a long, steady beep going off right next to my ear. I pause and look down at my MILES gear. A voice behind me says, "You're dead, Candidate." I turn around to see an instructor smiling down at me. He has a "God Gun" in his hand that allowed him to set off my gear. There is no way to protest my death. Disappointed, I take off my kevlar. My head feels like it is floating without the extra five pounds of protective gear. I jump out and sit against the roof of my foxhole. The cool morning air now feels refreshing. The battle is over. The remaining enemy soldiers are frantically running from body to body. They confiscate our unused ammunition and clear foxholes, securing the area that moments ago belonged to my platoon and I.

After cleaning up the battlefield and packing our gear, we get a half an hour to eat breakfast and prepare for the twelve mile road march back to the barracks. Although this is the longest road march we've done, in some ways it's the easiest. This is the last major obstacle before we graduate Officer Candidate School (OCS), the only course in the Army's Infantry School that accepts women. Two-and-a-half months of intense physical, mental and emotional training have come together today. Sleep deprivation, midnight runs up Cardiac Hill, hours of push-ups, miles of road marches, sixty pound rucksacks, physical competitions, pull-ups before and after every meal, four minutes to eat using only a spoon, obstacle courses, leadership exercises and classes, immaculate uniforms and barracks, simulated combat missions, land navigation, various hazing-style rituals, mocking and insults, blistered feet, bloody palms, and one equal standard have all been deemed essential in making me a capable Army officer. During my training here, I have done things that I never thought I was capable of. I have enjoyed experiences that I would have shunned earlier in my life. I have tested my limits and found that they are much further out than I knew. I feel like I could do anything. "Self-confidence" doesn't even begin to describe it. I dare somebody to tell me there's something I can't do.

But there is something They tell me I can't do it. But I know I can. The guys in my platoon know I can – they've told me so. My instructor knows I can – he said he thinks I should get the chance. But I won't get that chance. Because they've said that I can't. The Army, Congress, the Supreme Court, they all agree. They've all said it in black and white. I can't do it. I can never be a combat soldier.

I. INTRODUCTION

Some say that feminism has no place working to put women into combat. Indeed, it seems almost counterintuitive to try to put women in harm's way on the battlefield, when we have to fight so hard to keep them safe at home. Others claim that there are more pressing issues, such as domestic violence, rape, pornography and sexual harassment, and that

fighting for women to be combat soldiers is a luxury we cannot yet afford. But these issues are all inextricably linked. The men who founded our country and who have interpreted our Constitution adopted an idea that has existed since pre-Hellenistic Greece, that military participation is a fundamental part of citizenship. Citizenship, in turn, is the foundation for equality. The Founders spoke in those terms, the Supreme Court has spoken in those terms, and the Constitution speaks in those terms. Equality is what gives us a platform to claim the rights that are the natural possession of all citizens, including protection from violence and harassment. If we are not equal, if we are not citizens, we will never be heard. If we are not allowed, and if we are not obligated, to fight in our country's defense, we will never be full citizens and we will never be equal.

Beyond equality, and beyond citizenship, however, is the military's mission. Although the military's mission tends not to be of concern to most feminists, it is of great concern to Congress, military leaders and the courts, all of whom have placed the military's mission above any group's claims of equality. Because of the military's high priority in legal decision-making, this issue cannot be ignored. Contrary to most current thought, however, which posits combat effectiveness as a reason for keeping women out, and even beyond those who claim that the force would not be weakened by women's presence, women in combat would, in fact, create a stronger, more effective fighting force. Women have many strengths that are conducive to modern combat, which the military has left unexploited. By taking advantage of the contributions that women can offer, and by focusing on each individual soldier's assets, the military could only improve its combat effectiveness.

This article suggests that women's equality will always be hollow as long as they are excluded from the right and obligation of full participation in the military. Part II explains the central role of the combat soldier, and the effects on servicewomen of women's exclusion from this role. Part III analyzes the concept of citizenship, including what it means to be a citizen, and whether this definition is in sync with modern values and feminist theory. Part IV accounts for the argument that the military's mission outweighs any group's claim of equality and citizenship. The first section analyzes the stated reasons for judicial deference in military matters and determines that such complete abdication is not justified. The second section dissects the purpose of the combat exclusion policy, dismantling the arguments supporting it and concluding that women's inclusion would not only be conducive to the military's mission, but it would create a more effective fighting force. Part V concludes that women must step forward, fully-armed with the status of citizenship, before they will be allowed to claim the full rights of equality.

II. WHY COMBAT MATTERS

A. A HISTORY OF EXCLUSION

*[M]en must provide the first line of defense while women keep the home fires burning.*¹

Women have unofficially participated in our military since the American Revolution, but they have never fought on equal ground with men.² Not until World War II were women given official status when Congress temporarily created women's auxiliary services for each branch of the military to compensate for a shortage of men.³ After the war, women were given permanent status in the military for the first time, although it came with severe limitations, including exclusion from combat.⁴ After women's significant participation and highly regarded performance in the first Gulf War, Congress partially repealed the combat ban, allowing women to fly combat aircraft⁵ and serve on naval ships exposed to combat.⁶ Army policy, however, still prevents women from serving in positions that involve "direct combat."⁷

1. United States v. Saint Clair, 291 F. Supp. 122, 125 (S.D.N.Y. 1968).

2. During the American Revolution, thousands of wives and children, who could not support themselves while their husbands and fathers fought, followed the men, earning their subsistence through nursing, cooking and laundering for the troops. See Linda K. Kerber, "A Constitutional Right to be Treated Like . . . Ladies": Women, Civic Obligation and Military Service, 1993 U. CHI. L. SCH. ROUNDTABLE 95, 110 (1993) (citing JOHN C. DANN, THE REVOLUTION REMEMBERED: EYEWITNESS ACCOUNTS OF THE AMERICAN REVOLUTION 240-50 (1980)). By the American Civil War, the "modern" army officially excluded all women except nurses, but this did not keep women from the front as hundreds cross-dressed as spies and soldiers, and more than 20,000 women worked in military hospitals. *Id.* at 110-11.

3. See MARTIN BINKIN & SHIRLEY J. BACH, WOMEN AND THE MILITARY 7 (1977). 350,000 women, including 4,000 segregated African-American women, served in a variety of occupations short of combat. Kerber, *supra* note 2, at 111.

4. See Women's Armed Services Integration Act of 1948, Pub. L. No. 80-625, 62 Stat. 356 (1948) (codified in scattered sections of 10 U.S.C.) (establishing women as permanent members of the armed forces). Military regulations excluded women from combat positions, limited the numbers who could serve and the rank they could reach, and gave them fewer benefits than men. Kerber, *supra* note 2, at 111-12. Women could not supervise men, and Women Air Service Pilots, who were all white, could not fly with men in their aircraft, were denied military status, and were not eligible for veterans benefits. *Id.* at 112.

5. See National Defense Authorization Act for Fiscal Years 1992 and 1993, Pub. L. No. 102-190, 105 Stat. 1290 (1991).

6. See National Defense Authorization Act for Fiscal Year 1994, Pub. L. No. 103-160, 107 Stat. 1547 (1993).

7. Direct combat is "engaging the enemy on the ground . . . while being exposed to hostile fire and a high probability of direct physical combat with the hostile force's personnel." John Lancaster, *Aspen Eases Combat Policy; Goal Is to Expand Opportunities for Women*, WASH. POST, Jan. 13, 1994, at A1. With this, Secretary of Defense Les Aspin replaced the "risk rule," opening a potential 10,000 to 15,000 jobs to women. See James Kitfield, *Women Warriors*, GOV'T EXECUTIVE (Nat'l Journal ed.), Mar. 1994, cited in

There are no military jobs that are inherently combat or noncombat.⁸ The combat label is not based on empirical data about the requirements of a particular job or women's ability to do such a job. Its sole function is to exclude women from specified jobs, which change depending on what the military or Congress determines women's proper military role to be at any particular moment.⁹ The primary purpose of designating a position as combat, and excluding women therefrom, is to express and maintain the gender line.¹⁰ Even military leaders acknowledge that "If all women were discharged tomorrow, most of the distinctions [between combat and noncombat jobs] would be abandoned the day after."¹¹ Because the military's decisions are not based on women's capabilities, the combat exclusion thus reflects the military's desire to control when, where, and how women are allowed to fight. This, in turn, allows the military to control how servicewomen view themselves, how they are viewed by servicemen, and how they are viewed by society. This view reflects a lesser, second-class soldier: One who cannot fight; one who cannot defend herself, her troops or her country; one who is not equal.

B. I AM THE INFANTRY, FOLLOW ME

*Oh hail, Oh hail, Oh infantry
Queen of Battle, follow me
Oh, airborne ranger's the life for me
For nothing in this world is free*¹²

There is an idea that permeates the Army¹³ and, consequently, affects

Michael J. Frevola, *Damn the Torpedoes, Full Speed Ahead: The Argument for Total Sex Integration in the Armed Forces*, 28 CONN. L. REV. 621, 626 n.34 (1996).

8. See Kenneth L. Karst, *The Pursuit of Manhood and the Desegregation of the Armed Forces*, 38 UCLA L. REV. 499, 531 (1991).

9. See Karst, *supra* note 8, at 531. Each branch has considerable leeway in deciding what positions constitute combat. Pamela R. Jones, Note, *Women in the Crossfire: Should the Court Allow It?*, 78 CORNELL L. REV. 252, 254 (1993). With the Reagan Administration, for example, the Defense Department instituted "womanpause," intended to slow the progress of servicewomen. Karst, *supra* note 8, at 578. This included a switch in the Department of Defense's position on women in combat, an expansion of the number of jobs labeled combat, and resegregation of basic training. *Id.*

10. Karst, *supra* note 8, at 537. The military's maintenance of gender lines has also been expressed by denying male nurses the commission that their female counterparts received in World War II. See Kerber, *supra* note 2, at 112 n.54.

11. JEANNE HOLM (MAJOR GENERAL), *WOMEN IN THE MILITARY: AN UNFINISHED REVOLUTION* 395 (1982).

12. QUEEN OF BATTLE (U.S. Army Cadence).

13. While much of this paper applies to all of the military services, I focus on the Army for several reasons. First, I am a member of this branch, so I am most familiar with it. Second, it is by far the largest of all the services. See Washington Headquarters Servs. Directorate for Info. Operations and Reports, *Average Military Strength*, at <http://www.defenselink.mil/pubs/almanac/almanac/people/strength.html> (last visited May 14, 2003) [hereinafter *Active Duty Strength*]; Washington Headquarters Servs. Directorate

society at large. The idea is basically that infantrymen are the real soldiers, and everyone else in the Army supports them. The infantry is the reason we win wars. They are the reason our organization is admired and feared around the world. They are "the backbone of the Army." This is by no means intended to diminish the role of combat-support and combat-service-support troops. There is no question that all positions are absolutely vital to every military mission and victory. If the infantry cannot eat, they cannot fight. If they do not have boots, they cannot fight. If they do not have weapons, fuel, and ammunition, if they cannot get medical attention for the wounded, and if they cannot communicate, they cannot fight. But the truth is that the Army is centered around the infantry soldier.¹⁴ Everyone else is there to make sure that he can do his job.

Pride and morale are strongest among combat soldiers. This was reflected during World War II when women who served closer to the front had higher morale than those in the rear.¹⁵ Infantrymen are the ones who are celebrated on television and in books and movies.¹⁶ They are the ones young children pretend to be when they "play war." The infantry's slogan speaks volumes: "I am the infantry. Follow me." Though perhaps overglorified, they are the driving force of the Army, the reason for its being; everyone else follows. If women ever want to be taken seriously and treated equally in the military, they must be permitted to do more than follow.

C. EQUALITY WITHIN THE MILITARY

*To the extent that we use the military as a testbed for social experimentation we risk the security of the nation.*¹⁷

There are both philosophical and practical reasons that favor allowing

for Info. Operations and Reports, *Guard and Reserve*, at <http://www.defenselink.mil/pubs/almanac/almanac/people/reserve.html> (Sept. 30, 1998) [hereinafter *Reserve Strength*]. Third, it was the most successful branch in implementing racial integration. See Karst, *supra* note 8, at 521. Fourth, it contains, aside from the Marines, the most jobs closed to women. See *infra* note 21 and accompanying text. Further, I focus on the infantry soldier as the prototypical combat soldier because the infantry is what most people think of when they speak of combat. It also embodies the strongest arguments in favor of the combat exclusion. In other words, if women can get down in the dirt on the front lines, they can go anywhere.

14. See, e.g., *Toth v. Quarles*, 350 U.S. 11, 17 (1955) (stating that "it is the primary business of armies and navies to fight or be ready to fight wars should the occasion arise").

15. See Karst, *supra* note 8, at 530. Women's morale was especially low when they were "assigned to stereotyped 'women's work' or otherwise made to feel that they were not taken seriously." *Id.*

16. See, e.g., Jill L. Goodman, *Women, War, and Equality: An Examination of Sex Discrimination in the Military*, 5 WOMEN'S RTS. L. REP. 243, 255 (1980) (stating that the "vast literature on war attests to the fascination of combat").

17. Jeff M. Tuten, *The Argument Against Female Combatants*, in FEMALE SOLDIERS – COMBATANTS OR NONCOMBATANTS? HISTORICAL AND CONTEMPORARY PERSPECTIVES 237, 261 (Nancy L. Goldman ed., 1982) cited in Frevola, *supra* note 7, at 652 n.185.

women into combat positions. Women will never achieve true equality or full citizenship within our society as long as they are excluded from combat.¹⁸ More immediately, however, as long as the combat exclusion exists, women in the military will remain second-class soldiers – limited in career advancement, presumptively incapable, disrespected, and sexually harassed.

1. The Camouflaged Glass Ceiling

The military is the nation's largest employer, and it offers employment opportunities that are not easily matched by civilian employers, especially for women.¹⁹ However, the combat exclusion policy precludes women from pursuing certain career paths, training opportunities, and educational benefits, making equality within the military structure nearly impossible.²⁰

Currently, 32.8% of jobs in the Army are not available to women.²¹ Beyond being directly excluded from the career paths and opportunities that these jobs would provide, women are precluded from certain training, experiences, and benefits that hinder advancement in the ranks.²² Military schools are a significant consideration in promotions to higher ranks. Women are prohibited from attending various highly regarded schools, such as Ranger School. Soldiers with a "Ranger Badge" are highly respected and are in a preferred position for promotion. Rank, in turn, helps determine a soldier's pay. These affects can follow a person even after they have left the military because of veterans preferences and retirement benefits that are based on rank.²³

This infantry bias, and how women are disadvantaged by it, became obvious when I competed for "Soldier of the Year."²⁴ Part of the competition requires competitors to answer several questions in front of a board.²⁵ The questions could be about any general military topic. At the

18. See *infra* Part III.

19. See Jones, *supra* note 9, at 256-57 (noting that many military jobs open to women are traditionally male-dominated).

20. See Kerber, *supra* note 2, at 120.

21. See Diane H. Mazur, *A Call to Arms*, 22 HARV. WOMEN'S L.J. 39, 64 n.129 (1999) (citing MARGARET C. HARRELL & LAURA L. MILLER, NATIONAL DEFENSE RESEARCH INST., NEW OPPORTUNITIES FOR MILITARY WOMEN: EFFECTS UPON READINESS, COHESION, AND MORALE 12 tbl. 2.1 (1997)). This is compared to 20.8% of jobs for all the services that are closed to women. See *id.*

22. See Kerber, *supra* note 2, at 120; James D. Milko, Comment, *Beyond the Persian Gulf Crisis: Expanding the Role of Servicewomen in the United States*, 41 AM. U. L. REV. 1301, 1311 (1992) (stating that the combat exclusion prevents women from attaining many senior command positions).

23. See Kerber, *supra* note 2, at 120.

24. The Soldier of the Year competition allows lower enlisted soldiers to compete annually for the title. Competitors are judged on a variety of factors, including military bearing, knowledge, and appearance. Each soldier competes at his or her unit first, with the winner competing against the winners of other units at successively higher command levels.

25. Competitors are also judged on military bearing, which, for women, is greatly enhanced by wearing a skirt.

lower levels of the competition, where the judges were supply-oriented, the questions were about a wide variety of basic soldiering knowledge. When I got to the final level, where I was competing against soldiers from all types of units, almost all of the questions were infantry-based.²⁶ I was directly disadvantaged because I was not an infantry soldier. I was further disadvantaged because I am not interested in learning such information, and am therefore less likely to retain it, because I know I will never use it.

2. Presumed Inability

Within the military structure, women's status as second-class soldiers has a strong effect on the women who serve. Most male soldiers have a tendency to presume that a female soldier cannot carry her own weight in a task, especially one that involves physical ability. While this presumption can be overcome by a female soldier proving her ability, this is complicated by a lack of opportunity and the need to prove it to every male that makes the presumption. It also often requires a particularly excessive feat to overcome this presumption.

For example, a male soldier that I did not know once attempted, without asking, to assist me while I did my mandatory post-meal pull-ups. Another male soldier that I had trained beside for over two months stopped him. He informed him that I did not need any help because I had climbed the rope at a particular obstacle course "better than most of the males in this company." Here, the presumption that I was unable to do pull-ups on my own was overcome by proving myself on an exhausting endurance course. This is not very helpful in most situations, however, because opportunities to prove such physical ability are few and far between for most non-infantry soldiers.

3. No Respect

*Participation within the community is a predicate to power and influence within the community.*²⁷

Through exclusion, the military teaches²⁸ its members, in no uncertain terms, that women "do not speak with authority about the subject that is the center of the services' mission": Combat.²⁹ Both men and women receive

26. For example, one of the questions was about the range of a particular type of grenade that I had never heard of.

27. Mazur, *supra* note 21, at 86.

28. Beyond formal education, individuals in the military are highly influenced by teaching through example. Karst, *supra* note 8, at 527-28. This was vividly demonstrated during the Army's experiences with racial integration where both black and white soldiers accepted black soldiers' equal capabilities only when they faced combat together. *Id.* at 527.

29. *Id.* at 528. This is contrasted by the acceptance of servicewomen's ability to lead and speak authoritatively about all other military subjects. *See id.*

this message, and both men and women are socialized to understanding it as the truth.³⁰ This socialization affects even those women who oppose combat exclusion. If women cannot speak with authority on the subject, they cannot credibly oppose the military's decision. They are effectively silenced.

Some claim that admission into the military on the military's terms is enough for equality purposes. One legal theorist has stated that, "Women do not need to be veterans of hand-to-hand ground warfare to speak knowledgeably about the military."³¹ She then pointed to the fact that several men have served in less-than-combat positions and have spoken and been taken seriously on military matters.³² But even men who have served in non-combat positions are not viewed as incapable of serving in combat. They just chose not to. The difference is that women are not taken seriously because they do not serve in combat because they are not allowed to serve in combat. It is this perceived inability, not just a lack of actual experience, that tarnishes women's ability to speak with authority on military matters.

Along with this presumption of inability comes a subtle lack of respect that faces many military women that is directly fostered by women's exclusion from combat. This inequality can lead to open resentment and hostility toward women, as evidenced by activities at the Tailhook Convention.³³ Just this year, a female non-commissioned officer, who has at least fifteen years of military experience and is a teacher as a civilian, told me that when she needs to tell her soldiers to do a task or to keep them in line, she invokes the name of a male superior as the source of the instruction. "Otherwise, you know, men don't like a woman telling them what to do." This sentiment was official military policy until the early 1960s when a woman officer could only "direct men when her orders were construed to be emanating from her male superior."³⁴

When I was at OCS, there was a candidate in my platoon, Jeter. He had been in the Army for over ten years, had prior experience as a drill sergeant and an infantry soldier, and had never worked with a female until coming to OCS. At one point in our training, we had to conduct anonymous peer evaluations of all the members in our platoon, which included ranking each member based on leadership ability.³⁵ Jeter placed

30. See generally *id.* at 527-28 (discussing the military's strong impact on men and women socialization).

31. Mazur, *supra* note 21, at 66.

32. See *id.* (pointing to Senator Sam Nunn, who served one year as a seaman in the Coast Guard, and Representative Steven Buyer, who was an Army Reserve lawyer).

33. See, e.g., Kitfield, *supra* note 7; Eric Schmitt, *Wall of Silence Impedes Inquiry into a Rowdy Navy Convention*, N.Y. TIMES, June 14, 1992, at A1.

34. Kerber, *supra* note 2, at 112 (citing SUSAN M. HARTMANN, *THE HOME FRONT AND BEYOND: AMERICAN WOMEN IN THE 1940s* 38 (1982)).

35. While the evaluations were ostensibly anonymous, I, as the platoon's administrative

all four females in our platoon within the bottom five slots. This was not typical. In fact, three candidates with prior infantry experience placed me within their top five slots, and I was ranked eleventh overall in the platoon.³⁶ The most likely explanation was that Jeter's lack of experience with female soldiers prevented him from fairly evaluating our abilities as compared to our male counterparts.

Women's exclusion maintains that women do not have authority regarding the heart of the military's mission. Without such authority, servicewomen will not receive the respect they have earned and deserve.

4. Sexual Harassment

It is well documented that when women work alongside men in substantial numbers they are accepted as coworkers, colleagues, and leaders.³⁷ Conversely, exclusion or acceptance in token numbers serves to reinforce gender stereotypes, allowing men to see and treat women as "abstract symbols of womanhood or objects of romantic attraction."³⁸ This indicates that the combat exclusion itself instigates an atmosphere conducive to sexual harassment.³⁹ When combined with the military's use of "raunchy sexist and homophobic imagery" in training,⁴⁰ it seems that explosive scandals, such as Tailhook, are inevitable.

The results of two comprehensive studies on sexual harassment commissioned by the Army suggested that the Army needs more women in positions of influence.⁴¹ While neither study specified allowing women into combat, this is a great position of influence, and would thus have a great impact on reducing sexual harassment.⁴²

Even rank does not protect a woman from sexual harassment.⁴³ Just

assistant, had to enter the evaluations into a computer.

36. While I felt like this was a low ranking, my instructor was very impressed and said that he had never had a female rank so high and that I must have been highly respected by the platoon.

37. See Karst, *supra* note 8, at 538.

38. *Id.* at 538, 541.

39. See Kathryn Abrams, *Gender in the Military: Androcentrism and Institutional Reform*, LAW & CONTEMP. PROBS. Autumn, 1993, at 217, 220-22 (1993).

40. Karst, *supra* note 8, at 532 n.133. While women's integration into the services has somewhat lessened the use of explicit sexism, segregated training environments continue to provide a forum for sexist imagery. *Id.*

41. See Mazur, *supra* note 21, at 87 (citing DEPARTMENT OF THE ARMY, INSPECTOR GENERAL, SPECIAL INSPECTION OF INITIAL ENTRY TRAINING EQUAL OPPORTUNITY/SEXUAL HARASSMENT POLICIES AND PROCEDURES 4-3, 6-20 (1997); 1 SECRETARY OF THE ARMY, SENIOR REVIEW PANEL REPORT ON SEXUAL HARASSMENT 24-25 (1997)).

42. See Abrams, *supra* note 39, at 220-22 (noting the connection between the combat exclusion and sexual harassment and the military's inability to comprehend such a connection).

43. See Jane Gross, *Focus Is Put on Soldier's Accuser*, N.Y. TIMES, Mar. 3, 1998, at A12. Major Michelle Gunzelman accused Sergeant Major Gene C. McKinney of sexual harassment (Sergeant Major is the Army's highest enlisted position, but still outranked by any officer, including the major). *Id.*

this past March, I had a specialist⁴⁴ joke that I had passed a particular task that the rest of the men in my group had failed because the instructor liked my smile. Never mind that the task involved putting on protective masks, and the instructor could not see anyone's faces.

The combat exclusion dictates that women are, by law, second-class soldiers. Explicit limitations that are placed on women in the military send a clear message to military women and men, as well as society at large, that servicewomen are not full soldiers. Until they are accepted as full and equal soldiers, servicewomen cannot expect the opportunity, respect, and freedom from harassment that they are entitled to.

III. CITIZENSHIP, THE MILITARY, AND MEN

A. TRADITIONAL CONCEPTIONS OF CITIZENSHIP

*The first requisite of a good citizen in this Republic of ours is that he shall be able and willing to pull his weight.*⁴⁵

Soldiering is an essential element of citizenship and is recognized as such by feminists,⁴⁶ the Commander in Chief,⁴⁷ Congress, and the Supreme Court.⁴⁸ Because women have been historically excluded from the military, and are still excluded from full participation in it, their citizenship status has never been fully realized. Not until women are permitted full participation in the military will they be treated as full citizens, allowed all the protections of equality guaranteed to every citizen.

1. What Makes a Citizen

*May only those Americans enjoy freedom who are ready to die for its defense.*⁴⁹

There is an ancient, if not well understood, connection between

44. A specialist is enlisted and is outranked by a lieutenant, which is my rank.

45. President Theodore Roosevelt (Nov. 11, 1902), *quoted in* Merrienne E. Dean, Note, *Women in Combat – The Duty of the Citizen-Soldier*, 2 SAN DIEGO JUST. J. 429, 429 (1994) (citing NEW YORK OXFORD DICTIONARY OF QUOTATIONS).

46. See Mary M. Cheh, *An Essay on VMI and Military Service: Yes, We Do Have to Be Equal Together*, 50 WASH. & LEE L. REV. 49, 56 (1993). "If only men are capable and required to serve their country -- to fight if necessary to defend it -- then only they can claim full citizenship." *Id.*

47. President Jimmy Carter linked registering women for the draft with women's willingness to meet "the responsibilities of citizenship." Kerber, *supra* note 2, at 116 (citing *Hearings on Military Posture and HR 6495 before the Subcomm. on Military Personnel of the House Comm. on Armed Servs.*, 96th Cong, 2d Sess 135 (1980) (statement of Jimmy Carter, President of the United States, supporting the registration of men and women)).

48. See *The Selective Draft Cases*, 245 U.S. 366, 378 (1918) (stating that "the highest duty of the citizen is to bear arms at the call of the nation").

49. This was a toast offered on the first anniversary of the Declaration of Independence. Kerber, *supra* note 2, at 107.

military service and citizenship, and between citizenship and manhood.⁵⁰ Military service has been viewed since the Revolution as the citizen's "supreme and noble duty."⁵¹ The Supreme Court has stated that "the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need."⁵² Consequently, if a citizen is forbidden from rendering her duty, the government will be under no reciprocal obligation to her.⁵³ Thus, a denial of women's full participation in the military "ultimately robs women of the right to first-class citizenship."⁵⁴

The Founding Fathers promoted an egalitarian vision of the American Citizen as free and equal.⁵⁵ This vision, however, collided head on with the reality of a nation that acted with "hostility and ambivalence on issues of race, gender, and poverty[, which] would haunt the evolution of American citizenship."⁵⁶ The Revolution provided the Founders with the opportunity to define American citizenship, and they did so by excluding various groups.⁵⁷

For example, in the aftermath of the abolition of slavery, many believed that the Thirteenth and Fourteenth Amendments gave African-American men the status of citizenship, along with all of its concomitant rights and obligations.⁵⁸ In opposition to this idea, Senator Thomas Hendricks associated the incorporation of African Americans as citizens with military incompetence.⁵⁹ He compared Congress' attempt to create a racially universal definition of American citizenship, one of "the proudest

50. See Kerber, *supra* note 2, at 119.

51. *The Selective Draft Cases*, 245 U.S. at 390. Although military service as an obligation is substantially less visible in this era of an all-volunteer army, men are still required to register with the MSSA (Military Selective Service Act), and are subject to the draft, should it be implemented.

52. *Id.* at 378.

53. For example, African Americans and women have historically not been able to count on state protection from violence. See Robert J. Cottrol & Raymond T. Diamond, *The Second Amendment: Toward an Afro-Americanist Reconsideration*, 80 GEORGETOWN L.J. 309, 359 (1991); Elizabeth Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973, 985 (1991).

54. *Selective Service Registration Hearing Before the Task Force on Defense and International Affairs of the House Comm. on the Budget*, 96th Cong., 2d Sess. 38 (1980) (testimony of Judy Goldsmith, Vice President-Executive, National Organization of Women) [hereinafter *Registration Hearing*].

55. See James W. Fox Jr., *Citizenship, Poverty, and Federalism: 1787-1882*, 60 U. PITT. L. REV. 421, 424 (1999). "[Is not] the Constitution . . . scrupulously impartial to the rights and pretensions of every class and description of citizens? . . . No qualification of wealth, of birth, of religious faith, or of civil profession, is permitted . . ." THE FEDERALIST NO. 57 (James Madison).

56. Fox, *supra* note 55, at 427. For example, the vast majority of states excluded women, minorities, and the poor from voting. See *id.* at 438-39.

57. See *id.* at 450 n.102 (citing JOAN HOFF, LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN 49-150 (1991)).

58. See *id.* at 489-520.

59. See *id.* at 500.

titles on earth," with Mexican citizenship, which includes "a mixed population, made up of races that ought not to mingle – whites, negroes and Indians – of whom twenty thousand could not cope with four thousand soldiers of the United States of pure white blood on the fields of Buena Vista."⁶⁰ It was nearly a century before African Americans would be fully integrated into the Armed Forces.⁶¹

White women were never explicitly excluded from citizenship,⁶² as were African Americans,⁶³ but were viewed and treated as second-class citizens,⁶⁴ or "women as citizen."⁶⁵ This status included something less than "the full panoply of citizenship rights and privileges."⁶⁶ A white woman's citizenship was defined by her role as wife and mother.⁶⁷ Her primary civic obligation was to inspire and develop the full public citizenship of her husband and sons.⁶⁸ While this role was not provided in the U.S. Constitution, it was found by the Supreme Court in "[t]he constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicat[ing] the domestic sphere as that which properly belongs to the domain and functions of womanhood."⁶⁹ This being so, women were summarily excluded from white men's primary citizenship activities, including voting, property

60. *Id.* (citing CONG. GLOBE, 39th Cong., 1st Sess. 2939 (1866)).

61. *See* Exec. Order Nos. 9980 & 9981, 3 C.F.R. 720-22 (1948). Successful desegregation was largely due to the achievements of African Americans in World War II and Korea. *See* Karst, *supra* note 8, at 518-21.

62. *See* Fox, *supra* note 55, at 443. It was not until ratification of the Fourteenth Amendment that the Constitution became formally gendered, with Section 2 describing apportionment in terms of "male citizens." *See id.* at 552. However, even this did not preclude women from technically being considered citizens, albeit unequal ones. *See* Minor v. Happersett, 88 U.S. (21 Wall.) 162, 165-69 (1874).

63. *See* Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1856) (recognizing a national citizenship and excluding African Americans from any aspect of it).

64. *See* Kerber, *supra* note 2, at 95-96. This has been attributed to the asymmetrical state of domestic relations in place during the early republic, including "the claims of the married man to his wife's body, her earning power, and her property." *See id.* at 107.

65. *Bradwell v. State*, 83 U.S. (16 Wall.) 130, 140 (1872) (Bradley, J. concurring) (denying that the plaintiff had the right to practice law because women did not have a citizen's right to the profession of their choice).

66. Fox, *supra* note 55, at 443. While Americans cried, "no taxation without representation," women were denied the right to vote until 1920, even though they were obligated to pay taxes all along. *See* Kerber, *supra* note 2, at 96. Conversely, although women have always had the right to a jury trial, they were systematically discouraged from serving on juries until 1975 when the Supreme Court held that women must be placed equally in jury pools with men. *See* Taylor v. Louisiana, 419 U.S. 522 (1975); Kerber, *supra* note 2, at 96. What were viewed as automatic rights and obligations for men were hard-fought privileges for women. *See generally id.* at 96.

67. *See* *Bradwell*, 83 U.S. (16 Wall.) at 141 (Bradley, J. concurring) (finding that, "The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother"); *see also* Fox, *supra* note 55, at 443, 450.

68. *See* Fox, *supra* note 55, at 450.

69. *Bradwell*, 83 U.S. (16 Wall.) at 141 (Bradley, J. concurring).

ownership, and military service.⁷⁰

In *Minor v. Happersett*,⁷¹ the Supreme Court denied that women had the right to vote as a privilege and immunity of citizenship.⁷² The *Minor* Court reasoned that women had always been citizens and had always been denied suffrage, thus suffrage was not a privilege of their citizenship.⁷³ In other words, voting was a privilege only for those citizens who already had it.⁷⁴ Women were excluded from full citizenship because they had always been excluded because they were women.

Over a century later, the Court in *Rostker v. Goldberg*⁷⁵ held that women did not have to register for the military draft.⁷⁶ The Court reasoned that because women are excluded from combat positions, and the purpose of the draft is to provide combat soldiers,⁷⁷ women could be excluded from draft registration.⁷⁸ In effect, the Court excluded women from a primary citizenship requirement, that of military obligation, because of their prior exclusion from combat roles. Women's citizenship did not include the civic obligation of military service. Although not laid out in such terms, women were excluded from full citizenship because they had always been excluded from combat because they were women.

The Supreme Court, in each of these instances, used women's prior unequal status to maintain that their current inequality was acceptable. The *Rostker* Court used servicewomen's forcibly unequal position as noncombat soldiers to justify discrimination in draft registration.⁷⁹ It thereby used women's unequal status as citizens to ensure that women could not become full citizens. Neither Court even questioned women's underlying exclusion from citizenship obligations, thus using tautological reasoning to justify one instance of unequal treatment with another. However, in the case of women's exclusion from combat, it is not justifiable.⁸⁰

70. See Fox, *supra* note 55, at 450.

71. 88 U.S. (21 Wall.) 162 (1874).

72. See *id.* at 178.

73. See *id.* at 165-69.

74. See Fox, *supra* note 55, at 558.

75. 453 U.S. 57 (1981).

76. See *id.* at 83.

77. That the only purpose of the draft is to supply combat troops is a weak factual premise to begin with. See Mazur, *supra* note 21, at 58, 58 n.100 (citing dissenting opinions in *Rostker* and noting that in a future draft "there would be a substantial demand for non-combat skills").

78. See *Rostker*, 453 U.S. at 76-83.

79. See Mazur, *supra* note 21, at 59. "The majority's acceptance . . . of legally created differences as a basis for other sex-based laws seems inconsistent with any serious commitment to eliminating sex discrimination." *Id.* (quoting Ann E. Freedman, *Sex Equality, Sex Differences, and the Supreme Court*, 92 YALE L.J. 913, 939 (1983)).

80. See *infra* Part IV(B).

2. Why Citizenship Is Important

*Equal obligations deserve equal rights.*⁸¹

While the Constitution bestows fundamental privileges and immunities upon citizens, it does not particularize what privileges are included.⁸² It is clear that, above all else, the Framers believed that citizenship encompassed a "sphere of equality."⁸³ Only those who were considered citizens could claim certain rights, privileges, and protections that were the "natural possessions of citizens in any republic."⁸⁴

There are real consequences of the combat exclusion beyond the abstract idea of second-class citizenship. Without full citizenship, there is no influence, no authority, and no power, within the military,⁸⁵ or outside of it.⁸⁶ The status of full citizenship gives those who hold it the ability to participate in the nation's decision-making.⁸⁷ Women have less authority in government, especially regarding military matters.⁸⁸ There is more violence against women and more sexism because the exclusion reinforces women's socialization as physically passive and as unable to fight equally alongside (let alone against) men.⁸⁹

B. CITIZENSHIP, EQUAL PROTECTION, AND VMI

In *United States v. Virginia*,⁹⁰ the Supreme Court decided that the quasi-military academy, Virginia Military Institute (VMI), did not have an exceedingly persuasive justification for excluding women.⁹¹ Though not explicitly, the Court reaffirmed the connection between the military and

81. *Department of Defense Authorization for Appropriations for Fiscal Year 1981: Hearings on Military Posture and HR 6495 [H.R. 6974] Before the House Comm. on Armed Services*, 96th Cong., 2d Sess. 135 (1980) (statement of Jimmy Carter, President of the United States, supporting the registration of men and women).

82. See Fox, *supra* note 55, at 436. The rights and privileges of citizenship were originally discussed as flowing from the Privileges and Immunities Clause in Article IV. See *id.* at 501. Later they derived from the similar clause in the Fourteenth Amendment. See *id.* When this was held invalid by the Court, the Equal Protection and Due Process Clauses became the source of a citizen's broad rights. See *id.*

83. *Id.* at 436 (citing THE FEDERALIST NO. 2, at 10 (John Jay) (Jacob E. Cooke ed., 1961)).

84. *Id.* Ancient Greeks limited the status of citizenship to men who fought, voted, held office, and owned property. See *id.* at 429. Later, British subjects, including early American colonists, could assert certain rights and privileges, such as access to the courts, that non-subjects could not. See *id.* at 431. In return, the Crown could assert authority over that person and demand his allegiance. See *id.* at 432.

85. See *supra* Part II(B)(3).

86. See Mazur, *supra* note 21, at 44, 63.

87. See generally Registration Hearing, *supra* note 54, at 40.

88. See Mary E. Becker, *The Politics of Women's Wrongs and the Bill of "Rights": A Bicentennial Perspective*, 59 U. CHI. L. REV. 453, 498-99 (1992).

89. See *id.* at 498-99; *infra* Part IV(B)(3).

90. 518 U.S. 515 (1996).

91. See *id.* at 519.

citizenship by looking at VMI's mission of producing citizen-soldiers.⁹² For the first time, the Court held that women "count [today] as citizens in our American democracy equal in stature to men."⁹³ The Court was criticized for not going further by asking whether there is ever any justification persuasive enough to exclude "women from an institution that trains persons in their full range of responsibilities as citizens."⁹⁴

Under the standard established in *United States v. Virginia*, the military's combat exclusion policy could not be defended against an Equal Protection attack. There is no exceedingly persuasive justification for keeping women, as equal citizens, out of combat positions.⁹⁵ In fact, it is likely hurting our forces.⁹⁶

The difference, of course, is that VMI is a school. It is not the military, nor is it directly connected in any way to the military. VMI's students will not be defending our country, they will not be fighting our wars, and they will not be on the front lines, unless they join the military like anyone else. The Court would never use such a standard in a case that dealt with the actual military because the Court abdicates all responsibility through absolute deference to Congress in military matters.⁹⁷

C. CITIZENSHIP, THE MILITARY, AND GENERATION X

*War is hell, man!*⁹⁸

The traditional concept of citizenship has been seriously questioned since the Vietnam War. Many have looked critically upon ideas of allegiance and citizenship that encompass participation in ill-considered and ill-founded national policies.⁹⁹ The implementation of an all-volunteer Armed Forces quieted many outright protests against the military, but this shift in ideals has resulted in declining military participation and support.¹⁰⁰

The idea of citizenship's dependence on military service, or even the idea of the military as a civic obligation may seem outdated. Perhaps all

92. See *id.* at 520. VMI's mission is to train and educate "citizen-soldiers, [ready] to defend their country in time of national peril." Dianne Avery, *Institutional Myths, Historical Narratives and Social Science Evidence: Reading the "Record" in the Virginia Military Institute Case*, 5 S. CAL. REV. L. & WOMEN'S STUD. 189, 220 (1996).

93. *United States v. Virginia*, 518 U.S. at 545.

94. Mazur, *supra* note 21, at 79.

95. See *infra* Part IV(B).

96. See *infra* Part IV(B).

97. See *infra* Part IV(A).

98. Bart Simpson, in *The Simpsons: Bart the General* (FOX television broadcast, Feb. 4, 1990).

99. See Kerber, *supra* note 2, at 109.

100. See Barbara B. Buchholz, *May the Armed Forces Be with You, Uncle Sam Still Wants You – And He's Got the Incentives to Prove It*, CHICAGO TRIBUNE, Oct. 3, 1999, at 1, available at 1999 WL 2918092; J. Scott Orr, *A Military Matter – Will Veterans Salute Candidates?*, STAR-LEDGER (Newark, N.J.), Nov. 11, 1999, at 1, available at 1999 WL 29596916.

this generation needs is a war to rally around¹⁰¹ or the passage of time to make Vietnam a distant memory. But even if the younger generations, who comprise about 70% of today's Armed forces,¹⁰² do not see the military as what defines their citizenship, they are still affected by an unbalance in their obligations.¹⁰³ They see that women do not have to register with the Selective Service. They see that women are not allowed into combat positions. The effect is that women are still viewed as unequal and in need of men's protection.

D. FEMINIST PERSPECTIVES ON CITIZENSHIP, THE MILITARY, AND MEN

*[The military's] values and its focus on physical violence are alien to most women.*¹⁰⁴

Feminists are severely fractured on the issue of women's involvement in the military in general, and in combat specifically.¹⁰⁵ The participation of feminists in the advocacy of women's integration into the military has been seen as one of the great dividing issues for the feminist movement.¹⁰⁶ One legal commentator has described this internal conflict in the context of Shannon Faulkner's admittance into The Citadel, but accurately describes feminist qualms with women in combat:

[Feminists] felt trapped into having to argue that a member of the group whose rights they were committed to defending should be permitted to do something that down deep they thought should not be done by anyone ever. And they were further forced into arguing, for exigent strategic reasons, that the admission of a member of their group would not change the institution she sought to enter, even though down deep they thought that change was exactly what such an institution needed and what opening it up might help provide.¹⁰⁷

While sameness feminists would advocate women's inclusion into combat because women can fight the same as men, most other feminists focus on the structure of the military itself. If changing the system is the

101. See Brian Gabriel, *What Generation X Needs is One Good War*, AUSTIN AM.-STATESMAN, Jan. 7, 1996, at C6, available at 1996 WL 3413975.

102. See Joseph J. Collins, *The Complex Context of American Military Culture: A Practitioner's View*, WASH. Q., Sept. 22, 1998, 1998 WL 12303578.

103. Although feelings of obligation have dissipated overall, some claim that women feel disproportionately little obligation. See Mazur, *supra* note 21, at 62.

104. Becker, *supra* note 88, at 501. The "Army Values" are: Loyalty, Duty, Respect, Selfless-Service, Honor, Integrity, and Personal Courage. Few words describe women more accurately.

105. See Mazur, *supra* note 21, at 42-43.

106. See *id.*

107. Mary Anne C. Case, *Disaggregating Gender from Sex and Sexual Orientation: The Effeminate Man in the Law and Feminist Jurisprudence*, 105 YALE L.J. 1, 101 n.356 (1995).

goal, then feminists must realize that only from within can changes be sought. Many feminists believe that the military “will change if it is just criticized, and that it will become a more feminist place even if feminists do not become a part of it. [But n]one of these things is going to happen . . . without a sense of obligation on the part of women, and on the part of feminists, that they are a part of the solution.”¹⁰⁸

It is not inconsistent for feminists to take the position that fundamental changes in the military structure are necessary on the one hand, and to fight for women’s full inclusion on the other.¹⁰⁹ Women would not have made the advances that they have in politics, for example, if they advocated abdication from the political system because it historically did not work for them.¹¹⁰ Full and equal participation and later transformation from within is the key to any real change.¹¹¹ The hope is that, from within, women can influence the military structure in a positive way. While women’s presence will never take the blood and horror out of combat, it may help ensure that as little blood as possible is spilled toward only the most worthy humanitarian goals, and only when absolutely necessary.

1. I Want It My Way

There are some feminist theorists who argue that women should be allowed to volunteer for combat positions if they want to, but that they should not be required to do so. This has been called the “having-it-both-ways suggestion.”¹¹² It reminds me of a favorite saying that one of my drill sergeants had: “This ain’t Burger King. You can’t have it your way.”

One reason put forward for this is the position of servicewomen who find the combat exclusion policy stigmatizing and harmful to their careers, but who do not want to serve in combat positions themselves.¹¹³ This is understandable, but if we want to be equal to men, we must serve equally with them.

2. Hell No, We Won’t Go

There is substantial resistance by some feminists to women’s participation in war at all, let alone in combat. The military and the violence that it represents are viewed as “the apotheosis of phallocentrism, a nonstop program of hierarchy, barely controlled aggression, and

108. Mazur, *supra* note 21, at 62.

109. *See id.* at 43–44.

110. *See generally id.* at 83 (indicating that the only way to use the democratic process effectively is through “integration, participation and open discourse”).

111. Feminism has long been committed to finding knowledge and seeking change through experience. *See* Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699, 1707 (1990).

112. Mazur, *supra* note 21, at 65.

113. *See* Abrams, *supra* note 39, at 235 n.61.

alienation."¹¹⁴ Thus, women "should be grateful to be excluded and spend our energy working to get the men excluded, too."¹¹⁵ Other feminists argue that military obligation should not be a part of the concept of citizenship. They contend that "we must go beyond notions of equality which end in the equal right to inflict violence, and search for alternative conceptions of citizenship which do not have violence at their core."¹¹⁶ While violence is nothing to aspire to, this argument ignores the significant role that the military plays in shaping our society. As long as the military remains the influential organization that it is, women must be allowed full participation if they are to influence society in any meaningful way.¹¹⁷

3. Pacifism

A pacifist, generally, seeks to maintain peace and to abolish war.¹¹⁸ The central purpose of the military is to fight wars, and thus pacifism is not conducive to the maintenance of a military organization at all. A pacifist would not support the further inclusion of women into a system that should be abolished.¹¹⁹ This is particularly true when that inclusion puts women at the core of the military's war-fighting mission.

A pacifist criticism of war was a major part of the feminist critique during the progressive era.¹²⁰ This continued into the 1970s when the advent of an all-volunteer military took much of the force from their argument.¹²¹ If women are more pacifist than men, then "excluding women from combat disarms women's pacifism. Their resistance means less because it has fewer consequences."¹²²

Pacifism is directly at odds with the traditional conception of citizenship. For example, in 1928, Rosika Schwimmer, a Hungarian academic who had an international reputation for pacifism and war resistance, applied for U.S. naturalization.¹²³ On her application she answered that she would not personally "take up arms in defense of this country."¹²⁴ She was denied citizenship based on this answer, which was

114. Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1328 n.256 (1987).

115. *Id.* This position has been attributed to a lack of knowledge of and experience with the military. See Mazur, *supra* note 21, at 41, 45. "We are often most afraid of what is outside our own experience." *Id.* at 45 n.31.

116. Stephanie A. Levin, *Women and Violence: Reflections on Ending the Combat Exclusion*, 26 NEW ENG. L. REV. 805, 806 (1992).

117. See Karst, *supra* note 8, at 528-29; Mazur, *supra* note 21, at 44.

118. *United States v. Schwimmer*, 279 U.S. 644, 649 (1929).

119. Peace activists find "the issue of women in the military . . . ideologically awkward." CYNTHIA ENLOE, *THE MORNING AFTER: SEXUAL POLITICS AT THE END OF THE COLD WAR* 210 (1993).

120. See Kerber, *supra* note 2, at 125.

121. See *id.*

122. Becker, *supra* note 88, at 498-99.

123. See *Schwimmer*, 279 U.S. at 647-49, 651; Kerber, *supra* note 2, at 108.

124. *Schwimmer*, 279 U.S. at 647.

upheld by the Supreme Court.¹²⁵ The court discussed pacifism as a threat to the nation's war efforts, and, by extension, a threat to the nation.¹²⁶ A pacifist did not embrace the "duty of citizenship by force of arms when necessary to defend the country against all enemies," and was therefore not worthy of citizenship.¹²⁷ The irony that she "would not be allowed to bear arms if she wanted to," was noted by Justice Oliver Wendell Holmes in his dissent.¹²⁸ The majority ignored the hypocrisy of requiring a woman to take an oath of allegiance that included willingness to take up arms when necessary, at a time when women were prevented from doing so, even voluntarily.

4. Dominance Theory

*Where in this country can someone go to find out if he is a man?
And where can someone who knows he is a man go to celebrate his
masculinity?*¹²⁹

Dominance theory's central criticism is that our society is built on male dominance and female submission.¹³⁰ The traditional concept of the citizen promotes male dominance by excluding women from citizenship and from power. This society, more specifically the men in charge of this society, created the concept of the American citizen that includes military service, and the military itself is the last bastion of male domination.¹³¹ These men promote the belief that a virtuous citizen serves his country through military service,¹³² and because men – specifically, in this case, heterosexual men – have traditionally filled the soldier role, they have effectively defined themselves as virtuous citizens. In this system, a woman, by definition, cannot be a virtuous citizen because she cannot serve in the military because she is not a man.

Dominance theory's solution would require a dismantling of our current concept of citizenship, which was created by men, and with it our ideas of military obligation. Restructuring the military or our ideas of citizenship in our present society is unlikely, to say the least. Thus, dominance theory, in practice, becomes impossible to implement.

125. See *id.* at 647, 653.

126. See *id.* at 652-53.

127. See *id.* at 653.

128. *Id.* at 653-54.

129. Karst, *supra* note 8, at 544-45 (citing James Webb, *Women Can't Fight*, WASHINGTONIAN, Nov. 1979, at 280 (statement by a young naval commander the year of the first gender-integrated graduating class at the Naval Academy)).

130. See Catherine A. MacKinnon, *Difference and Dominance: On Sex Discrimination*, in FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER 81, 87 (Katherine T. Bartlett & Rosanne Kennedy eds., 1991).

131. See Becker, *supra* note 88, at 501 (describing the military as "the most masculinist institution in our society"); Frevola, *supra* note 7, at 621; Mazur, *supra* note 21, at 66.

132. See *supra* Part III(A)(1).

Absent such a complete transformation, however, dominance theory would determine whether a given practice or policy "contributes to the maintenance of an underclass or a deprived position because of gender status," regardless of how rational, justified, or explainable the policy is.¹³³ Thus, women must be allowed into combat positions under the current structure because their present exclusion contributes to the subordination of women.¹³⁴

IV. THE MILITARY MISSION

*[T]he primary function of the military service is to defend American society, not to change it.*¹³⁵

Although combat effectiveness is not traditionally a feminist argument, we must remember, while arguing for equality, that the military's mission is an important one, perhaps the most important. This is the reason that women's full inclusion is worth fighting for, and it is also the reason that this issue must be addressed.

Courts have accorded increasing deference to Congress on questions of military policy because the military's mission is viewed as above any group's claim of discrimination.¹³⁶ Although the military's mission is critical, such extreme judicial deference is not warranted. Furthermore, a close examination of the arguments supporting the combat exclusion policy reveals that it does not accomplish its purported purpose of providing an effective fighting force.

A. DEFERENCE

*[J]udges are not given the task of running the Army.*¹³⁷

The idea of the courts deferring to the military can be traced back to the 1950s when the Supreme Court stated that, "Orderly government requires that the judiciary be as scrupulous not to interfere with legitimate Army matters as the Army must be scrupulous not to intervene in judicial matters."¹³⁸ While seemingly intended to keep judges out of day-to-day military decision-making such as training programs and duty rosters, this

133. CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* 117 (1979).

134. See CATHERINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 225-26 (1989).

135. Tuten, *supra* note 17, at 261.

136. See, e.g., *Rostker v. Goldberg*, 453 U.S. 57 (1981) (limiting selective service registration to men). The Court deferred to Congress over and above the President and military leadership, both of whom supported inclusion of women in registration. See Karst, *supra* note 8, at 566. To uphold a Congressional decision that disregards the President and military leadership "is deeply offensive to a constitutional regime founded on the principle of equal citizenship." *Id.* at 572.

137. *Orloff v. Willoughby*, 345 U.S. 83, 93 (1953).

138. *Id.* at 94.

deferential sentiment has grown into a form of judicial abdication of all things military.¹³⁹ Led by Justice William Rehnquist, this most extreme form of deference has come close to creating a military exception to the Bill of Rights.¹⁴⁰

This deference reached its pinnacle in 1981 when Justice Rehnquist wrote the majority opinion in *Rostker v. Goldberg*.¹⁴¹ The Court reversed the burden of proof in typical gender discrimination cases,¹⁴² which would require the government to justify the exclusion of women from draft registration.¹⁴³ Instead, the Court asked whether the inclusion of women was necessary for the government's purpose, and then easily concluded that they were not.¹⁴⁴ By this reasoning, any group could be excluded as unnecessary.¹⁴⁵

The relevant reasons given in *Rostker* for such military deference were the special needs of a separate community¹⁴⁶ and the judiciary's incompetence in military matters,¹⁴⁷ neither of which are valid reasons for such abdication of judicial responsibility. There is simply no special military need for antiquated stereotypes over and above any other forum.

1. Separate Community

The idea of the military as a separate community is grounded in the Constitution¹⁴⁸ and is a valid reason for deference with regard to certain military issues, such as discipline.¹⁴⁹ However, it has been used much more broadly with little to no explanation or justification beyond invoking the words "separate community."¹⁵⁰ This is a dangerous practice because these

139. See Jones, *supra* note 9, at 281 (citing C. Thomas Dienes, *When the First Amendment is not Preferred: The Military and Other "Special Contexts,"* 56 U. CINN. L. REV. 779, 815 (1988) (stating that the level of deference renders military issues essentially nonjusticiable)). See generally Karst, *supra* note 8, at 565.

140. See Karst, *supra* note 8, at 565. Opposing Rehnquist's position in *Rostker*, Justice Thurgood Marshall pointed out that "[e]ven the war power does not remove constitutional limitations safeguarding essential liberties." *Rostker*, 453 U.S. at 89 (Marshall, J., dissenting).

141. 453 U.S. at 59 (1981).

142. It has been suggested that Rehnquist had a larger plan to lower the level of judicial review in all sex discrimination cases and was setting the stage to overrule these earlier decisions with *Rostker*. Karst, *supra* note 8, at 578 n.290.

143. See *Rostker*, 453 U.S. at 105 (Marshall, J., dissenting).

144. See *id.* at 76-77, 94.

145. See Karst, *supra* note 8, at 578 n.290 (Stating that "By the same reasoning, there would have been no need to draft Catholics or persons of Asian ancestry.").

146. *Rostker*, 453 U.S. at 81-82.

147. *Id.* at 65.

148. The Constitution recognizes a separate system for military justice in Article I, section 8, which authorizes Congress to "make Rules for the Government and Regulation of the land and naval Forces," and in the Fifth Amendment excepting "cases arising in the land or naval forces" from the grand jury indictment requirement for infamous federal crimes. U.S. CONST. art I, § 8, cl. 14; *Id.* at amend. V.

149. See Karst, *supra* note 8, at 569.

150. See *id.* at 569-70; see, e.g., *Chappell v. Wallace*, 462 U.S. 296, 304 (1983); *Greer v.*

decisions have a way of reaching beyond the "separate community" and into mainstream society.¹⁵¹

This image of a community that is completely isolated from the rest of society does not accurately reflect the reality of today's military because the military is inextricably interwoven with civilian society.¹⁵² The volunteer services employ over two million Americans in a primarily peacetime force.¹⁵³ Even when deployed, most soldiers perform tasks that are comparable to civilian jobs.¹⁵⁴ Americans from all walks of life spend time in the military, many of them serving only a few years, then returning to civilian life with their military training and experience.¹⁵⁵ With the Reserves and National Guard, servicemembers can serve part time while maintaining a full time civilian career and life. The services are continually in the public eye,¹⁵⁶ and they are often the subject of heated political debate. This strong connection to the civilian world significantly narrows the cases when the military is legitimately a "separate community" and should be treated as such by the courts. There must be at least a minimal inquiry by the courts to determine if the "separate community" doctrine justifies its extreme deference.

The harm felt by groups that are excluded, whether from military service altogether or just certain parts of service, extend beyond the military into larger society, damaging the group as a whole in innumerable ways.¹⁵⁷ Women's exclusion from combat sends a clear message that women are not capable, and are therefore unequal and lesser. These extensive harms deserve judicial review that consists of more than "hollow shibboleths about 'deference to legislative decisions.'"¹⁵⁸

Spock, 424 U.S. 828, 838-40 (1975); *Parker v. Levy*, 417 U.S. 733, 743 (1974); *Orloff v. Willoughby*, 345 U.S. 83, 94 (1953).

151. See Karst, *supra* note 8, at 567. For example, *Parker v. Levy*, 417 U.S. 733 (1974), held that the First Amendment's vagueness doctrine did not apply with full force to the military. *Parker* was then cited to support the Court's decision in *Greer v. Spock*, 424 U.S. 828 (1976), which held that a military base could prevent a Presidential candidate who opposed the war in Vietnam from speaking on a street that was otherwise open to the public. *Greer* was, in turn, prominently cited in *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) which narrowed First Amendment protection of public forums generally.

152. See Karst, *supra* note 8, at 570-71.

153. See *Active Duty Strength*, *supra* note 13; *Reserve Strength*, *supra* note 13.

154. See Karst, *supra* note 8, at 570-71. The forces emphasize this fact in recruitment efforts. *Id.* at 571. In 1978, just five years after the end of the draft, 86% of soldiers responding to an Army survey agreed that "[m]ost soldiers today think of their Army service primarily as a job." *Id.* at 571 n.270 (quoting Segal, *Measuring the Institutional/Occupational Change Thesis*, 12 *ARMED FORCES & SOC'Y* 351, 354 (1986)).

155. See *id.* at 571.

156. See *id.*

157. See *id.* at 572.

158. *Rostker v. Goldberg*, 453 U.S. 57, 112 (1981) (Marshall, J., dissenting).

2. Judicial Incompetence

When the courts profess incompetence in deciding military issues, they tend to defer to “those more familiar with military matters.”¹⁵⁹ But just who has the knowledge necessary to make competent decisions regarding women’s inclusion in combat? Whose judgment is so revered that they are allowed to make “gross sociological and psychological generalizations” that would constitute impermissible discrimination based on stereotypes in any other context?¹⁶⁰ “The generals” have been cited as having the knowledge deserving of such deference,¹⁶¹ but these generals have been socialized and indoctrinated by the military’s discriminatory norms just like anyone else.¹⁶² General George Marshall once knew that black soldiers could not fight alongside whites.¹⁶³ General John DeWitt knew that Japanese Americans needed to be interned to prevent their subversion.¹⁶⁴ To the general that says he knows that women are not fit for combat because he has been there, he “has never ‘been there’ in a helicopter gunship with a woman pilot, or a tank crew that included a woman.”¹⁶⁵ As little relevant knowledge as the generals may have, surely politicians have even less, yet by the 1980s, led by *Rostker*,¹⁶⁶ they were the principle architects of military segregation.¹⁶⁷

Asking the courts to review these matters with more than the passing glance of review that courts currently engage in is simply asking judges to bring familiar legal tools regarding discrimination to this context.¹⁶⁸ Judicial review is needed with the utmost scrutiny when government policy serves to preserve a dominant group’s power position.¹⁶⁹ “When the national government explicitly and deliberately discriminates against historically subordinated groups, the suggestion that judges are incompetent to understand that discrimination betrays a fundamental conception of judicial review that has prevailed for half a century.”¹⁷⁰

159. *Ben-Shalom v. Marsh*, 881 F.2d 454 (7th Cir. 1989).

160. Karst, *supra* note 8, at 575; *see, e.g., United States v. Virginia*, 518 U.S. 515 (1996).

161. *See Ben-Shalom*, 881 F.2d at 460-62. “[W]hen evaluating whether military needs justify a particular restriction . . . courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest.” *Id.* (citing *Goldberg v. Weinberger*, 475 U.S. 503, 507-08 (1986)).

162. *See Karst, supra* note 8, at 576.

163. *See id.* at 575.

164. *See id.*

165. *Id.* at 576. Apparently the generals who know about women’s abilities do not include General Dwight D. Eisenhower who spoke highly of women’s performance in World War II and was “convinced that in another war [women] have got to be drafted just like men.” Kerber, *supra* note 2, at 111.

166. *See Karst, supra* note 8, at 577-78; Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 WOMEN’S RTS. L. REP. 175, 183-85 (1982).

167. *See Karst, supra* note 8, at 577.

168. *See id.* at 580.

169. *See Frevola, supra* note 7, at 662; Karst, *supra* note 8, at 580.

170. Karst, *supra* note 8, at 580.

B. THE FALLACY OF THE COMBAT KILLER

The wholesale exclusion of women from combat is an "ineffective, gendered [policy] that achieve[s] little but the exclusion of women."¹⁷¹ By logic, the exclusion does not achieve its stated purpose of maintaining the most effective fighting force. The most valuable combat soldier is one with the broadest range of productive skills.¹⁷² Instead of simply accepting a vision of the model combat soldier as a mindlessly violent killing machine, it is essential to ascertain how accurate this vision is.¹⁷³ The first task is to determine what traits, behaviors and strengths are valued in a combat soldier.¹⁷⁴ If both men and women possess those skills, then the military would be advantaged by using those individuals, whether male or female, who possess the greatest number of the most desired attributes. The model combat soldier is often viewed as a physically strong, emotionless, aggressive, nonthinking killing machine. This model simply does not comport with reality.

I searched high and low through military manuals for where it says a good soldier must be an aggressive, violent brute, but I could not find it.¹⁷⁵ Every infantry soldier I have ever known has been calm, laid back, and easy-going. Many of them have had a hilarious, if sometimes sick, wit. None of them have been particularly large or strong, but all have had incomparable proficiency in battlefield tactics (one was even a Harvard graduate) and were more than willing to assist others who were not as knowledgeable. I would trust any one of them to watch my back on a battlefield or anywhere else.

It is almost impossible to know what is truly required for the ideal combat soldier. Military leaders certainly have more experience in what constitutes combat effectiveness than anyone else. But they were trained and socialized by a system that promoted a certain way of thinking, a system that is averse to experimentation or change, a system built on the belief that it is the way, a system of male domination.¹⁷⁶ Because military leaders are the product of this system, and must have embraced it to have succeeded, it is impossible to know whether their opinions are based on

171. Diane H. Mazur, *Women, Responsibility, and the Military*, 74 NOTRE DAME L. REV. 1, 44 (1998).

172. See *id.* at 43.

173. A similarly stereotyped vision of police officers led to an undervaluation of various effective policing skills generally possessed by women, such as "interpersonal skills, sensitivity, politeness, and the ability to communicate." Case, *supra* note 107, at 85-94.

174. See Mazur, *supra* note 171, at 43.

175. See, e.g., United States Army Training and Doctrine Command, *IET (Initial Entry Training) Soldier's Handbook*, TRADOC Pamphlet 600-4 (1997); Department of the Army Headquarters, *Soldier's Manual of Common Tasks*, STP 21-1-SMCT (1994); Department of the Army Headquarters, *Military Leadership*, FM 22-100 (1990).

176. See Abrams, *supra* note 39, at 219 (describing how military leaders view their institution as a superb problem-solver); see also *supra* notes 160-64 and accompanying text.

their indoctrination or on true requirements for combat.¹⁷⁷

Recent military history supports the notion that when in need, the Army conveniently forgets its position on women's inferiority as soldiers and actively recruits them. After World War II, when the Department of Defense was worried about the quantity and the quality of male recruits, it turned to women.¹⁷⁸ The success of an all-volunteer force depended on women's presence.¹⁷⁹ Whatever costs were associated with women's integration were easily outweighed by the benefits.¹⁸⁰ Women were absent from duty at half the rate of men.¹⁸¹ Women generally brought a higher education to their military service.¹⁸² They had higher qualifications than their male counterparts.¹⁸³ They cost less to recruit and stayed in service longer.¹⁸⁴ They were substantially less prone to violent off-duty behavior and AWOL (absent without leave).¹⁸⁵ Largely because of these factors, the Department of Defense asked Congress to repeal the combat exclusion laws, but the request was denied.¹⁸⁶

Furthermore, women's differences in problem-solving can compliment men's approach. A training commander observed that "women will stop and analyze a problem looking for the best solution, while men will typically gather quickly together as a team and attack it through brute force. When you combine that analytic ability and strength, you can form a brilliant team."¹⁸⁷

Many reasons have been advanced since the 1970s to justify excluding women from combat,¹⁸⁸ however, not one reason withstands careful

177. See Abrams, *supra* note 39, at 225. For example, during racial integration, many military leaders believed that integration would irreversibly disrupt military discipline, but, in time, integration efforts proved extremely successful. See *id.* at 225-26.

178. See Kerber, *supra* note 2, at 112-13.

179. See *id.* at 113-14.

180. See *id.* at 114. Identified costs included lost time due to pregnancy, but this only approached about half of men's lost time due to violent off-duty behavior and AWOL (absent without leave). See Jones, *supra* note 9, at 263 n.88; Kerber, *supra* note 2, at 114. AWOL is basically an impermissible absence from duty.

181. See Jones, *supra* note 9, at 263 (citing OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE, *USE OF WOMEN IN THE MILITARY* 28 (2d ed. 1978)).

182. See Kerber, *supra* note 2, at 113. This is further reflected in the fact that, in 1993, 13% of all officers in the military were women, a higher percentage than were in the military overall. See Mazur, *supra* note 21, at 65 n.133 (citing LORY MANNING & JENNIFER E. GRIFFITH, *WOMEN'S RESEARCH AND EDUC. INST., WOMEN IN THE MILITARY: WHERE THEY STAND* 9 fig. 1 (2d ed. 1998)).

183. See *Rostker v. Goldberg*, 453 U.S. 57, 98 (1981) (Marshall, J., dissenting) (quoting Assistant Secretary of Defense Pirie and noting that "many of the best qualified people for some military jobs . . . will be women"); Kerber, *supra* note 2, at 114.

184. See Kerber, *supra* note 2, at 114.

185. See *id.*

186. See *id.*

187. James Kitfield, *Boot Camp Lite*, *GOV'T EXECUTIVE*, Feb. 1, 1998, 1998 WL 10314769 (quoting Navy Captain Cornelia Whitehead, Commander, Great Lakes Recruit Training Command).

188. Prior to the women's movement of the 1970s, neither the military nor Congress

analysis.¹⁸⁹ As women gain experience in combat-related positions, and men gain experience in seeing them there,¹⁹⁰ the reasons for exclusion become ever more tenuous and difficult to support. Some of these arguments, such as psychological capacity, are based on outdated stereotypes about women. Many of the reasons are not based on women at all, but are instead founded upon others' reactions to women. Besides being fundamentally unfair to punish one person for another's problem, these feared reactions, such as the disruption of unit cohesion, are purely speculation, and all relevant evidence shows that they are unfounded. Even the reasons that are based on biological conditions, such as pregnancy, can be acknowledged and accommodated in a way that does not require a blanket exclusion of all women from combat positions. When the given reasons are closely scrutinized, they turn out to be no more than male fear "dressed up as justifications for segregation and exclusion."¹⁹¹

1. Physical Strength

*How strong do you have to be to pull a trigger?*¹⁹²

While the idea of women being comparatively weaker than men in general was once the primary reason given for women's exclusion,¹⁹³ even the Department of Defense has abandoned this argument.¹⁹⁴ Highly technological modern warfare makes physical strength increasingly irrelevant to most combat jobs.¹⁹⁵ There are still some jobs, however, such as the infantry, that demand substantial physical strength and endurance. Conventional military wisdom dictates that because women are smaller and weaker than men, they will not be effective combat soldiers, therefore their presence will hinder combat effectiveness. This theory is faulty on two grounds, and embracing it actually harms the effectiveness of the force.

First, while it is true that the average woman is not as large or as strong as the average man, it is equally true that there are some women who are

believed that they needed to justify women's exclusion. See Frevola, *supra* note 7, at 624; Karst, *supra* note 8, at 529.

189. While it has been claimed that some of these beliefs are "so deeply engrained in so many of us . . . that they may be impervious to argument," I will try anyway. Karst, *supra* note 8, at 536.

190. See Mazur, *supra* note 21, at 64.

191. Karst, *supra* note 8, at 580. See *infra* Part IV(B)(9).

192. G.I. JANE (Hollywood Pictures 1997) (Anne Bancroft as Sen. Lillian DeHaven).

193. See Tuten, *supra* note 17, at 237-39, 247-48.

194. See Karst, *supra* note 8, at 532. It is interesting to note that the branches that rely most on technological warfare, the Navy and Air Force, have the most jobs open to women with 91.2% and 99.4% respectively. See Mazur, *supra* note 21, at 64 n.129. Compare *supra* note 21 and accompanying text.

195. See Frevola, *supra* note 7, at 637. Even the standard military rifle, the M-16, is lighter than its predecessor, and was first introduced for use by the South Vietnamese army who were generally smaller than their American counterparts. See *id.* at 641 n.131; Karst, *supra* note 8, at 532.

larger and stronger than some men.¹⁹⁶ Permitting these smaller, weaker men into the infantry while excluding the larger, stronger women, necessarily weakens the force. There are currently no qualifying standards for becoming an infantry soldier, so, theoretically, the weakest and smallest men could end up on the front line. Implementing a qualification test with equal standards for men and women would ensure that only the most qualified would become infantry soldiers.¹⁹⁷ Furthermore, Army research has shown that women's presence actually improves men's performance, as men in co-ed training units physically out-performed their counterparts in all-male units.¹⁹⁸ These soldiers would also be drawn from a larger pool of both men and women, thereby increasing the probability of getting the most skilled soldiers for the job, which would produce the most combat-effective force.

This theory also assumes that size and strength are the hallmarks of the most effective combat soldier, and this is not necessarily true. The only war that the United States has lost was to a country whose soldiers were, on average, smaller than the average American man.¹⁹⁹ Intelligence, speed, agility, endurance, calm under pressure, patience, attention to detail, and a mild temperament are all attributes that make a more effective infantry soldier.²⁰⁰ Women may possess all of these qualities in numbers equal to, if not greater than, men. Furthermore, there are some combat positions, such as a tanker, that would benefit from a smaller soldier.²⁰¹ Thus, by emphasizing sheer physical strength and size to the exclusion of all else, the military may actually reduce combat effectiveness. Allowing women to participate in all levels of the military will, in turn, allow the military to take advantage of all of women's strengths, thereby creating a stronger, more effective military force.²⁰²

196. See Frevola, *supra* note 7, at 636-37, 639 n.127 (citing Tuten, *supra* note 17, at 243; Hugh McManners, *Army Tests Clear Women for Battle*, SUNDAY TIMES (London), Dec. 3, 1995, at 9).

197. This could be achieved very easily by requiring certain scores on the Army Physical Fitness Test (APFT), which all soldiers must take semiannually. The scores could be adjusted to ensure that men and women of every age group are being judged by the same standard.

198. See Kitfield, *supra* note 187 (citing a 1994 study by the Army Research Institute for Behavioral and Social Sciences). Studies of police forces have also shown that men who have women partners fire more accurately and make better decisions about when to fire. See Frevola, *supra* note 7, at 650 n.176 (citing Lori S. Kornblum, *Women Warriors in a Men's World: The Combat Exclusion*, 2 LAW & INEQ. J. 351, 392-93 (1984)).

199. See Frevola, *supra* note 7, at 641.

200. See e.g., Mazur, *supra* note 21, at 74-75.

201. See McManners, *supra* note 196, at 9.

202. See Elizabeth V. Gemmette, *Armed Combat: The Women's Movement Mobilizes Troops in Readiness for the Inevitable Constitutional Attack on the Combat Exclusion for Women in the Military*, 12 WOMEN'S RTS. L. REP. 89, 93 (1990) (encouraging emphasis on "the usefulness of the reciprocity of different skills provided by mixed crews").

2. Pregnancy

There are two primary concerns regarding women's unique ability to get pregnant. The first is the danger that combat poses to an unborn fetus. This is a substantial concern, but it can be dealt with by requiring a pregnancy test before a woman is allowed into a combat situation.²⁰³

The second concern is that women will be absent from their jobs during the period of pregnancy.²⁰⁴ This affects a woman's combat readiness because pregnant women are not allowed to serve overseas.²⁰⁵ This was a substantial concern during the first Gulf War, but it is a problem for women in all parts of the military, not just combat.²⁰⁶ Furthermore, even with women losing time due to pregnancies, men still have at least twice as much "lost time" as women.²⁰⁷ It seems more than a little backward to restrict women simply because the reason they are gone is to have a baby, as opposed to men's absences for off-duty violence and AWOL.²⁰⁸

3. Psychological Capacity

*Man is more naturally violent than woman.*²⁰⁹

The idea of male aggressiveness and female passivity is an antiquated stereotype that does not necessarily reflect reality,²¹⁰ nor does it reflect what is desirable in a combat soldier.²¹¹ Apparently women are aggressive enough to fire long-range missiles,²¹² fly spy planes,²¹³ and serve on

203. This may present right to privacy concerns, but soldiers abandon most privacy rights upon joining the military. Soldiers already endure a battery of tests and inoculations before going overseas. Women could agree to pregnancy testing as a requirement of accepting a combat position. Captain Troy Devine did just that, agreeing not to get pregnant for one year and submitting to a pregnancy test every two weeks, so the Air Force would let her fly a spy plane. See Jones, *supra* note 9, at 268 n.129 (citing Barbara Kantrowitz, et al., *The Right to Fight*, NEWSWEEK, Aug. 5, 1991, at 22).

204. See Colonel Paul E. Roush (U.S.M.C. Ret.), *The Exclusionists and Their Message*, 39 NAVAL L. REV. 163, 167 (1990).

205. See Mady W. Segal, *The Argument for Female Combatants*, in FEMALE SOLDIERS—COMBATANTS OR NONCOMBATANTS? HISTORICAL AND CONTEMPORARY PERSPECTIVES, *supra* note 17, at 267, 272 (suggesting that contingency plans can provide for reassignment and replacement of pregnant women); Karst, *supra* note 8, at 535 n.144.

206. This concern may be overblown as many women in the first Gulf War returned to their units after giving birth out of unit loyalty. See Colonel David Hackworth, *War and the Second Sex*, NEWSWEEK, Aug. 5, 1991, at 29, 30. In fact, this is more of a concern for those positions already open to women, such as pilots, because they are more expensive to train and harder to replace. See Frevola, *supra* note 7, at 649.

207. See Frevola, *supra* note 7, at 647-48; Dean, *supra* note 45, at 444.

208. See Kerber, *supra* note 2, at 114.

209. Webb, *supra* note 129, at 148. "Man must be more aggressive in order to perpetuate the human race. Women don't rape men, and it has nothing to do, obviously, with socially induced differences." *Id.* Obviously.

210. See, e.g., Jack Leonard, *Arrests of Women on Rise in O.C.*, L.A. TIMES, Nov. 8, 1999, at A1 (noting rise in female violence).

211. See Karst, *supra* note 8, at 533-35.

212. See *id.* at 535.

battleships.²¹⁴ On a daily basis, women handle situations at least as stressful as combat, including domestic violence, emergency room traumas, gang violence, sexual assault, and single motherhood. Around the world, women have participated in modern combat to varying degrees. During the French Resistance in World War II, women were widely acknowledged to be more effective than men in certain sabotage operations.²¹⁵ Women came under fire as nurses in Korea and Vietnam.²¹⁶ They fought as soldiers with the Viet Cong and as guerrillas in several small yet bloody wars around the world.²¹⁷ More recently, Captain Linda Bray led a U.S. Military Police unit through a combat fire fight in Panama.²¹⁸ Furthermore, Army research indicates that women in co-ed training units show increased mental toughness and self-confidence.²¹⁹

Even men are not naturally combat soldiers, as is evidenced by the intense training required to prepare a soldier for combat situations.²²⁰ Even when trained, men are susceptible to “battle stress.” They were treated for post-traumatic stress disorder in record numbers during Vietnam.²²¹ All soldiers must be trained to effectively handle stress, fear, pain, and exhaustion; it is not natural.²²²

Moreover, aggressiveness in actual combat appears to be the exception rather than the norm.²²³ In World War II, for example, only about fifteen percent of American soldiers fired their rifles at the enemy.²²⁴ And in Vietnam, the primary victims of intentional friendly fire were officers that were seen by their troops as too aggressive.²²⁵ Indeed, in highly technical operations, common in modern combat, aggression is counterproductive.²²⁶

213. See Jones, *supra* note 9, at 268 n.129.

214. See Frevola, *supra* note 7, at 637.

215. See *id.* at 641 n.130; Karst, *supra* note 8, at 535. During World War II women fought in the military forces of France, Italy, Yugoslavia, Poland, and the Soviet Union. See *id.* at 543.

216. See Karst, *supra* note 8, at 543.

217. See Frevola, *supra* note 7, at 641 n.130 (citing S. SAYWELL, *WOMEN IN WAR* (1986); Karst, *supra* note 8, at 543).

218. See Karst, *supra* note 8, at 531 (in 1989).

219. See Kitfield, *supra* note 187 (citing a 1994 study by the Army Research Institute for Behavioral and Social Sciences).

220. See generally, e.g., Army Publications & Printing Command, *Combat Training Center Program*, AR 350-50 <http://books.usaps.belvoir.army.mil:80/cgi-bin/bookmgr/BOOKS/R35050/CCONTENTS> (last visited Mar. 30, 2000).

221. See Jeanne M. Lieberman, *Women in Combat*, 37 FED. BAR NEWS & J. 215, 219 (1990).

222. See generally Kornblum, *supra* note 198, at 415-16 (arguing that the military should focus more on training women properly instead of noting women's deficiencies without proper training).

223. See Karst, *supra* note 8, at 534.

224. See Frevola, *supra* note 7, at 652 n.182; Karst, *supra* note 8, at 534 (citing S. MARSHALL, *MEN AGAINST FIRE* 77-78 (1947)).

225. See Karst, *supra* note 8, at 534.

226. See *id.* at 535.

4. Special Accommodations

Some claim that costly modifications would have to be made to ships, barracks, and equipment to accommodate women.²²⁷ Undoubtedly, some adjustments would need to be made, but institutional adjustments are the norm when equality is introduced where it was previously lacking. The military survived such adjustments with full racial integration, it can survive gender integration as well.²²⁸

5. Capture, Rape, Torture, and Death

The desire to prevent women from being captured and killed, raped, and tortured is a visually compelling argument. It seems to indicate that women's lives are more valuable than men's, and thus in greater need of protection. After all, men are captured with the possibility of being raped and tortured as well.²²⁹ However, "No one seriously argues that young women's lives are worth more than young men's lives."²³⁰ In fact, these same images are commonly used within the pornography debate to prove just how valueless society thinks women's lives are.²³¹

The concern that captured women will be raped is not unfounded. Even American soldiers have not been immune to this ancient practice where women were often viewed as part of the victor's prize.²³² However, the combat exclusion may have the exact opposite effect of its intended goal of protecting women from violence. Most women already live in daily fear of physical attack. When women are told that they are unfit for combat, that they are incapable of fighting, that they need protection, they are more readily the victims of violence.²³³ This begs the question whether a potential "rapist would be less likely to attack a woman if he thought she

227. See Jones, *supra* note 9, at 267 (citing BINKIN & BACH, *supra* note 3, at 53-54). Any such costs would be a one-time expenditure, and many of these expenditures are already factored into the budget. See *id.* (citing BINKIN & BACH, *supra* note 3, at 53; Gemmette, *supra* note 202, at 97-98).

228. See Karst, *supra* note 8, at 580.

229. See Frevola, *supra* note 7, at 644 n.146.

230. Karst, *supra* note 8, at 537. Although no one makes this argument, such sentiment can be seen underlying some of the arguments opposing women's registration for the draft: "I would want my two sons to register and serve if necessary, but I am not going to give you my daughter." 126 CONG. REC. 1611 (1980) (statement by a U.S. Representative opposed to lifting the combat exclusion quoting a man who approached him in Mississippi).

231. See generally CATHERINE A. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED 163, 171-74 (1984); Catherine A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U. L. REV. 793 (1991).

232. See generally SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN AND RAPE* 31-113 (1975); Karst, *supra* note 8, at 537-38; Sarnata Reynolds, Comment, *Deterring and Preventing Rape and Sexual Slavery During Periods of Armed Conflict*, 16 LAW & INEQ. J. 601, 602, 604 (1998) (citing Ruth Seifert, *War and Rape: A Preliminary Analysis*, in MASS RAPE: THE WAR AGAINST WOMEN IN BOSNIA-HERZEGOVINA 58-65 (Alexandra Stigmayer ed., 1994)).

233. See Registration Hearing, *supra* note 54, at 41-42; Frevola, *supra* note 7, at 644 n.146 (citing Kornblum, *supra* note 198, at 406).

had been trained as a Marine.²³⁴

This argument has been attributed to man's role as woman's protector,²³⁵ which is enhanced by combat exclusion because it posits women as unable to fight for themselves. Apparently this role is limited, however, to the protection of American women from enemy men.²³⁶ American men watch pornography that contains these images.²³⁷ They commit these acts against enemy women, against the women of the countries that we are supposed to be protecting, and against American women at home.²³⁸ But somehow the idea of enemy men committing these acts against American women is compelling enough to prevent women even from voluntarily fighting on the front lines. To allow men to decide for women when it is impermissible for them to risk rape is intolerable.²³⁹

Aside from this hypocrisy is the fact that the threat of capture and all of its terrible potential already exists for servicewomen. Two women were captured during the first Gulf War²⁴⁰ and thirteen were killed.²⁴¹ A woman radio operator was among the 15 Americans killed in the Afghanistan conflict.²⁴² Most recently, of the seven soldiers known to have been captured and listed as prisoners of war by Iraq in Gulf War II,²⁴³ one was a woman.²⁴⁴ Another two women were among the first 17 soldiers listed as missing until one was rescued²⁴⁵ and the other was determined to have been

234. Registration Hearing, *supra* note 54, at 41-42.

235. See Karst, *supra* note 8, at 537 (citing Judith Stiehm, *Women and the Combat Exemption*, 10 PARAMETERS: J. OF U.S. ARMY WAR COLLEGE 51, 53 (1980)). "Is it possible that the aversion of men to the suffering of women is actually based on their feeling that when a woman suffers it is because men have failed to protect that woman? Is the pain they feel for women, or is it the pain of their own failure?" *Id.*

236. *Id.* at 538. It is further suggested that men's protective interest in general is more about protecting their own possessive interest against a rival man's interference than about protecting the woman's personal interest in being safe. See *id.* at 538 n.152; Kerber, *supra* note 2, at 127 (suggesting that women cannot rely on the protection of men when, in the current culture of domestic violence, women have to protect themselves from men).

237. See generally Park Elliott Dietz & Alan E. Sears, *Pornography and Obscenity Sold in "Adult Bookstores": A Survey of 5132 Books, Magazines, and Films in Four American Cities*, 21 U. MICH. J.L. REFORM 7 (1988).

238. See Frevola, *supra* note 7, at 644 n.146 (citing Kornblum, *supra* note 198, at 388).

239. See Karst, *supra* note 8, at 538.

240. See Jones, *supra* note 9, at 269 n.135 (citing CHICAGO TRIBUNE, Dec. 29, 1991, at C1). The first Gulf War is also known as Operation Desert Storm.

241. See *id.* at 268 n.137.

242. See Michael Hedges, *7 Marines Killed in Pakistan Crash; Aircraft Slams into Mountain*, THE HOUSTON CHRONICLE, January 10, 2002, at A1.

243. Gulf War II is also known as Operation Iraqi Freedom.

244. See Bill Hendrick, *War in the Gulf: Homefront: Prisoners of War: Rescue Raises Families' Hopes*, ATLANTA J.-CONST., April 3, 2003, at 14A; Ann McFeatters, *Policy or Not, More Women Are in Combat*, PITTSBURGH POST-GAZETTE, March 25, 2003, at A1.

245. See *Raising Hopes -- and Fears; For Families, Rescue is Joyous, News of 11 Bodies Ominous*, NEWSDAY (NEW YORK), April 4, 2003, at A06; *The Early Show* (CBS television broadcast, April 3, 2003).

killed in action.²⁴⁶

Modern warfare has blurred the idea of a "front" and "rear."²⁴⁷ Combat support units, which include women, are increasingly the targets of enemy operations.²⁴⁸ Modern tactics dictate attacking the enemy's supply.²⁴⁹ Female pilots risk being shot down behind enemy lines where capture becomes likely.²⁵⁰ In the end, "[t]he exclusion of women from combat positions does not keep women out of harm's way; it keeps women in their place."²⁵¹

The public seemed to survive the first Gulf War just fine, even though American women were killed and taken prisoner.²⁵² In fact, there was a loud call for complete integration of women,²⁵³ suggesting that Americans are ready to allow women to take their place, risking their lives beside men in defense of our country.

6. Sex in the Foxholes

A fear of soldiers engaging in sexual activity when they should be fighting is frequently invoked as a basis for women's exclusion from combat. The idea that when you get men and women together under stressful conditions, they will have sex, does not seem far-fetched. While this may or may not be true, it is more an argument for excluding women from the military in general than from combat. In fact, it seems like sex would be less of a problem on the front lines than among support units. This was borne out in OCS when the only rumors about sex between candidates occurred at the end of the three-month course when all of the physically demanding infantry-style training was over and we had a lot of time off. This is largely due to practical constraints. On the front lines, there are no beds, there is less availability of drugs and alcohol, and there is less time off and little time to relax.

Another reason that sex on the front lines is not a serious concern is that soldiers there are going to be ultimately concerned with preserving their lives and accomplishing an immediate and all-consuming mission. If

246. See Foster, *America's Women Warriors*, MILWAUKEE J.-SENTINEL, April 7, 2003, at 14A.

247. See Frevola, *supra* note 7, at 627.

248. See *id.* at 642 n.136 (citing Paul E. Roush, *Rethinking Who Fights Our Wars – And Why*, Address to Harvard Law School (Apr. 6, 1991), in CAROL WEKESSER & MATTHEW POLESSETSKY, *WOMEN IN THE MILITARY* (1991)). Indeed, the servicewomen killed and captured in Gulf War II were members of a rear-echelon maintenance unit. See Jerry Adler, *Jessica's Liberation*, NEWSWEEK, April 14, 2003, at 44; Hendrick, *supra* note 244.

249. See Frevola, *supra* note 7, at 642; Dean, *supra* note 45, at 457.

250. See Karst, *supra* note 8, at 538 (stating that it is even more dangerous for a pilot, captured alone, as opposed to an infantry soldier, captured with her unit).

251. *Id.* at 579.

252. See Kerber, *supra* note 2, at 126.

253. See, e.g., Milko, *supra* note 22, at 1323 (citing Gallup poll indicating 79% of the public favored allowing women in combat).

they are not focused, they will die.²⁵⁴ Because they cannot afford to be distracted by thoughts of sex, they will suppress any such desires. Furthermore, it has been shown that integration of women in large numbers, as opposed to tokenism, into close working relationships increases the likelihood that women will be seen as buddies and leaders rather than as objects of romantic desire.²⁵⁵

7. Men's Need To Protect

There is a fear that if women were in harm's way, men's chivalry would not allow them to carry out their mission without first ensuring the safety of the women.²⁵⁶ There is some truth to this concern, however it is certainly not insurmountable. While it would not benefit anyone to advocate making men less gentlemanly, there is nothing wrong with teaching them that there is a time and place for chivalry, and the battlefield is neither.

One example of this was when we were going to conduct an ambush during OCS training. I was assigned to be the M-60 gunner, which meant I had to carry a twenty-five pound machine gun two miles to our next location; this in addition to my sixty-plus-pound rucksack. Before and during our trek, at least four guys came up to me to ask if I needed any help carrying the weapon. Each time I told them I was fine and assured them that I would ask for help if I needed it. Of course, in reality I would sooner drop down dead than ask for help in carrying the weapon, but my assurance allowed them to go on without worrying about me.

8. Unit Cohesion Through Male Bonding

Male bonding generally refers to the close ties that are formed among soldiers in a unit during combat, which produce loyalty, heroism, and self-sacrifice.²⁵⁷ There is no reason that these ties would be any different if women were included in a "group of people [who] . . . feel a strong sense of mutual responsibility under conditions of extreme stress."²⁵⁸ In fact women are generally socialized for just the self-sacrifice that military heroism requires.²⁵⁹ Furthermore, women have overcome these same arguments and integrated successfully into police and firefighting units.²⁶⁰

254. This type of distraction has also been cited as a reason to keep women out. See Karst, *supra* note 8, at 540. However, it is not the women who have the problem, it is the men.

255. See *id.* at 541.

256. See Robert H. Knight et al., *Women in Combat: Why Rush to Judgment*, HERITAGE FOUND. REP., June 14, 1991, available at <http://www.heritage.org/research/nationalsecurity/BG836.cfm> (claiming that Israeli men "moved to protect the women members of the unit instead of carrying out the mission of the unit").

257. See Karst, *supra* note 8, at 543.

258. *Id.* at 543-44. These ties have been found to a lesser degree in athletic teams of men and women. See *id.* at 543.

259. See *id.* at 543 n.174.

260. See BINKIN & BACH, *supra* note 3, at 91 (noting "women's prominent role in terrorist

This argument was used to keep African Americans out of combat, but integration showed that ties become stronger the closer soldiers come to a combat environment, even in racially mixed groups.²⁶¹ In the end, the only reason to exclude women from combat bonding is to preserve men's feelings of dominance and to reduce men's anxieties over the need to impress women.²⁶²

9. The Fragile Male Ego

*No man with gumption wants a woman to fight his battles.*²⁶³

This last reason is unofficial, but it seems the most honest. It has been argued that if women were allowed to fight alongside men, it would be "an enormous psychological distraction for the male who wants to think he's fighting for that woman somewhere behind It tramples the male ego."²⁶⁴

This reasoning points to a fear that, if allowed, women will perform just fine.²⁶⁵ When women, who have been subordinated by men, "make a serious bid for equal treatment, they not only threaten to displace [men] from a power position, but threaten [men's] very sense of self."²⁶⁶ Nothing else can account for the fact that the services are not even willing to test women's abilities to perform in combat units, even in peacetime.²⁶⁷ If women are never even tested in combat, the military can create any reasoning they want to justify women's exclusion, and it cannot be proven wrong.

Many of the arguments now used to keep women out of combat were once put forward to prevent racial integration of the services.²⁶⁸ When sample units were integrated, however, all of the military's worries were

and guerrilla groups, in which strong patterns of male-bonding would be expected to exist"); Jones, *supra* note 9, at 266.

261. See Karst, *supra* note 8, at 544; Captain Carol Barkalow, *Women Have What it Takes*, NEWSWEEK, Aug. 5, 1991, at 30.

262. See Karst, *supra* note 8, at 544 (asking, "if women are powerful, what does it mean to be a man?"); Kornblum, *supra* note 198, at 424. "As long as leaders continue to emphasize women's presumed weaknesses and as long as men relate male sexuality to men's domination of women, military men will continue to compete against military women to the detriment of men's combat effectiveness. This problem is men's problem, not women's." *Id.*

263. Karst, *supra* note 8, at 539 n.156 (citing CHRISTINE L. WILLIAMS, GENDER DIFFERENCES AT WORK: WOMEN AND MEN IN NONTRADITIONAL OCCUPATIONS 55 (1989) (quoting General William Westmoreland)).

264. Karst, *supra* note 8, at 534.

265. See *id.* at 538-39.

266. See *id.* at 577.

267. See *id.* at 539. Indeed, when women were tested in Britain, the British defense department concluded that women performed satisfactorily in every military position. See also McManners, *supra* note 196, at 9.

268. See Frevola, *supra* note 7, at 627.

proven unfounded.²⁶⁹ Most of these arguments have also been used to oppose women's participation as police officers.²⁷⁰ But as more women become police officers, they become more accepted as equals on the force, and their presence becomes less remarkable.²⁷¹ It is not inconceivable that the military now fears that the same thing would happen if women were allowed into combat.²⁷²

Furthermore, the asserted arguments lose any force when they are abandoned in times of military need. During the Civil War and World War II, African Americans were excluded from combat but then brought to the front when the military decided they were needed.²⁷³ Racial segregation in the Korean War impaired combat effectiveness, so commanders integrated their units.²⁷⁴ In the 1970s when the draft was abolished, women were actively recruited and proposed for combat eligibility.²⁷⁵ The combat exclusion does not serve its stated purposes, but it does serve to maintain the gender line, to maintain the military's traditionally masculine image of "power and weapons in the hands of 'real men.'"²⁷⁶

V. CONCLUSION

Women claim, among other things, the right to procreate or not to procreate, the right to speak freely, the right to be heard and taken seriously, the right to represent a constituency in Congress, the right to equal pay for equal work, the right to an education and a profession of our choice, the right to bear arms, and the right to be free from domination, violence, and harassment. How can we claim such rights when we owe no obligation to defend the Constitution and the country that offers such rights, no obligation to risk the ultimate sacrifice in its name? We cannot.

That is the reason this issue is crucial and must be addressed. We have been fighting the battle for equality backwards. We must first take our place as equal citizens before we can credibly demand the rights that go along with such status. Only when we are allowed to fulfill our equal obligations will we have the chance to claim our equal rights. When women are allowed to literally fight on equal ground, with equal training,

269. See Karst, *supra* note 8, at 541-42. Many argued that African Americans could not lead, and that white men would not accept African Americans in positions of authority over them. See *id.* at 541.

270. See *id.* at 539. Policemen argued that women were too small, not aggressive enough, too emotional, less able to handle stress, likely to need more protection, likely to distract male officers, and likely to undermine necessary male bonding. *Id.* at 539 n.157.

271. See *id.* at 539-40. This has also been noted to be true of firefighters and prison guards. See *id.* at 539 n.158.

272. See *id.* at 539.

273. See *id.* at 579.

274. *Id.*

275. See Karst, *supra* note 8, at 579.

276. *Id.*

equal respect, and equal benefits as men, only then will we bear society's proper credentials that will allow us to fight for all the rights that we, as full citizens, are granted and deserve.